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OFFICE OF ADMINISTRATIVE HEARINGS
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CASSANDRA PAYNE
Tenant/Petitioner,

v.

A & A MARBURY, LLC
Housing Provider/Respondent

Case No.: RH-TP-06-28616

FINAL ORDER

I. Introduction

On May 8, 2006, Tenant/Petitioner Cassandra Payne filed Tenant Petition (“TP”) 28,616 with the Rent Administrator against Meta James, property manager for Respondent A & A Marbury, LLC, alleging violations of the Rental Housing Act of 1985 (the “Act”) at Tenant’s housing accommodation, 2300 Good Hope Road, S.E., Apartment 704, Washington, D.C. As of October 1, 2006, the Office of Administrative Hearings (“OAH”) holds hearings and issues decisions in cases previously heard and decided by the Rent Administrator. D.C. Official Code § 2-1831.03(b-1).

On November 3, 2006, OAH issued a Case Management Order scheduling a hearing in this matter. The hearing was continued to December 18, 2006, when Ms. Payne and the attorney for Housing Provider, A & A Marbury, LLC, appeared and presented their cases.¹ For reasons

¹ The building complex where Tenant lived was styled as the Marbury Plaza Apartments. *See* Respondent's Exhibits ("RX") 207, 208. As noted in the Findings of Fact and Conclusions of Law below, the documents filed with the Rent Administrator named A & A Marbury, LLC, as the owner of the property. RXs 201, 204, 205. The tenant petition designated Meta James, the

set forth below, I find that Tenant failed to sustain her burden to prove that Housing Provider violated the Rental Housing Act. Accordingly, the tenant petition is dismissed.

II. Analysis of the Evidence

A. Background

On December 15, 2004, the Tenant, Cassandra Payne, executed a lease for apartment No. 704 in the Marbury Plaza Apartments, 2300 Good Hope Road, S.E. The lease stated that the rent was \$670 per month. Respondent's Exhibit ("RX") 208.² The lease was accompanied by a Concession Addendum that Ms. Payne signed which provided:

The rental rate on Apartment 2300 #704 is being adjusted from \$770.00, the current market rent for the following reason and according to the following terms

* * *

X----- Reduced Rental Rate. Rental rate has been reduced to **\$100 Off Per Month**. The pro-rated amount upon move-in will be \$367.42 for the month of Dec.

Thereafter the monthly rent will be \$670.00 starting with the month of Jan and ending on the 30th day of the month of Nov. 2005.

RX 206.

In February 2006 Tenant received a Notice of Increase in Rent Charged from Housing Provider, stating that her rent would be increased from \$670 to \$688.09. Housing Provider's

former property manager of Marbury Plaza Apartments, as the Housing Provider. At the hearing the present property manager, Quawdecia Storey, testified that Ms. James no longer worked there. Accordingly, I have designated the owner of record, A&A Marbury, LLC as Housing Provider under OAH Rule 2925.2. See Finding of Fact No. 11, Conclusion of Law No. 2 below.

² A list of the exhibits admitted into evidence is set forth in the Appendix.

present property manager, Quawdecia Storey, testified that Tenant's notice, and notices sent to many of the other tenants, had been improperly calculated. In a letter to the residents dated March 22, 2006, Meta James, the property manager at the time, gave notice that the residents should "disregard the rent increase letter that was send [sic] to you in February, 2006," because the rent increases were "not calculated properly." The residents were told that the management would be "sending out new letters with the correct increase amount on them." RX 207.

Tenant then received a second Notice of Increase in Rent Charged. It stated that the "Current Rent Charge" was \$670, the "Increase in your rent charged is:" \$118, and the "new rent charged" would be \$788, effective May 1, 2006. The notice identified the "increase in rent ceiling to which the increase in rent charged is attributed" as the annual CPI-W increase under Section 206(b) of the Rental Housing Act, D.C. Official Code § 42-3502.06(b). The rent ceiling increase was stated to be \$118.

At about the time the revised rent increase notices were sent to Ms. Payne and other tenants, Ms. James posted a notice offering the tenants an opportunity to reduce the amount of their rent increases in return for executing a new lease. On April 27, 2006, Ms. Payne inquired about the proposal and Ms. James offered her a 12 month lease agreement effective May 1, 2006, with a monthly rent of \$720. PX 101. Ms. Payne testified that she asked Ms. James for a chance to review the lease and returned the next day with questions about why the rent had been increased and about whether Housing Provider was going to make repairs to Tenant's apartment and to the building. According to Ms. Payne, Ms. James refused to answer any questions and then refused to let Ms. Payne sign the lease. Ms. Payne finally left when Ms. James threatened to call security.

Ms. Payne also testified about a number of maintenance problems she experienced in her building. (1) The hot water was sporadic and would often be turned off without any notice to the tenants. (2) Her apartment had holes in the walls. (3) The “plumbing was bad.” (4) There were roaches and “rodents” in the hallways. (5) When she moved into the apartment there was no carpet on the floor and a stink that provoked an allergy attack.³ (6) The building had holes in the hallway walls.

Ms. Payne asserted that she had “talked to” the property manager about conditions in her apartment. But she described no specific complaints that she made to Housing Provider before she met Ms. James on April 28, 2006, with questions about the lease. Ms. Payne testified that she had taken photographs of some of the conditions, but she did not bring the photographs to the hearing. She provided no details about when the problems began or whether and when they were cured. Although she had seen a housing inspector in the building on at least one occasion, she could not say whether any housing code violations had been issued.

On May 8, 2006, shortly after Ms. James refused to let Ms. Payne sign the new lease, Ms. Payne filed this tenant petition with the Rent Administrator. The petition alleged that: (1) Housing Provider had not provided a proper thirty day notice of rent increase; (2) Housing Provider failed to file the proper rent increase forms with the Rental Accommodations and Conversion Division (“RACD”); (3) a rent increase was taken while the unit was not in substantial compliance with the District Housing Regulations; and (4) Housing Provider had

³ Ms. Payne testified that Housing Provider later provided a carpet. Although Ms. Payne complained about the quality of the carpet, she did not explain whether or how this problem contributed to any alleged violation of the housing code at the time her rent increase was implemented.

directed retaliatory action against Ms. Payne for exercising her rights under the Rental Housing Act.

It is undisputed that Tenant regularly paid the \$788 monthly rent that Housing Provider demanded.

B. Tenant's Claims Concerning Notice

Tenant's first allegation in the tenant petition is the claim that she was not given a proper 30 day notice of her prospective rent increase. Ms. Payne testified that she received a first notice from Housing Provider in February, 2006, informing her of an increase in her rent from \$670 to \$688. PX 102. Following receipt of this first notice, Ms. Payne testified that she received a second notice that gave notice of an increase from \$670 to \$788. PX 103, RX 203. Ms. Payne did not say when she received the second notice, but she acknowledged that she received a letter dated March 22, 2006, from Housing Provider advising the residents that the original rent increase was not calculated properly and Housing Provider would send out "new letters with the correct increase amount." RX 207.

Housing Provider countered Ms. Payne's testimony with testimony from Ms. Storey and with documents that the parties stipulated were on file with the Rent Administrator. Ms. Storey testified that the second notice was sent out in March. An Affidavit of Service for Notice of Rent Adjustment was filed with the Rent Administrator and date-stamped March 24, 2006. RX 202. It stated that a notice of rent adjustment was served by mail on Ms. Payne on March 24, 2006. In view of this evidence, I find that Ms. Payne received the second notice of rent adjustment at least 30 days before the May 1, 2006 date on which the adjustment was implemented.

Ms. Payne acknowledged at the hearing that her principal concern was not the sufficiency of her notice, but Housing Provider's refusal to let her sign a lease that would have allowed her to pay a monthly rent of \$720 rather than \$788. She stated: "My whole issue here today is about the lease agreement that was offered." The proposed new lease did not constitute a notice of rent adjustment that was subject to jurisdiction under the Rental Housing Act. To the extent that Tenant asserts a contract claim based on an offer and acceptance, this administrative court does not have jurisdiction to resolve the dispute.⁴

C. Tenant's Claim of Failure To File Proper Forms

Tenant's second claim in the tenant petition is that Housing Provider "failed to file the proper rent increase forms with the Rental Accommodations and Conversion Division." But in her testimony Ms. Payne said little about the forms that were filed beyond identifying the notices of rent increase and letter that she received from Housing Provider. PXs 102, 103. Her testimony focused instead on Housing Provider's aborted offer to have her sign a new lease at a rent of \$720 per month.

In response to Tenant's claim that Housing Provider failed to file the proper forms, Housing Provider submitted its Notice of Increase in Rent Charged, RX 203, which was identical

⁴ The jurisdiction of the Office of Administrative Hearings is limited by its enabling statute. See *Boyer v. OTR*, 2006 D.C. Off. Adj. Hear. LEXIS 107 at *4 ("OAH has limited jurisdiction that is conferred by statute, D.C. Official Code § 2-1831.03, or if statutorily authorized, by delegation"). Under the Rental Housing Act, OAH may order rent refunds and roll backs where the Administrative Law Judge finds that the housing provider has demanded rent in excess of the maximum allowable rent or substantially reduced related services. D.C. Official Code § 42-3509.01(a). But OAH does not have jurisdiction to enforce leases or to award damages for breach of lease. See *Russell v. Smithy Braedon Prop. Co.*, TP 22,361 (RHC Jul. 20, 1995) at 15, n. 13 (holding that the Rental Housing Commission does not have jurisdiction to determine the amount of rent owed); *Redmond v. Majerle Mgmt., Inc.*, TP 23,146 (RHC Oct. 24, 1995) at 12 (holding that the Rent Administrator does not have authority to award damages).

to the Notice that Tenant herself submitted, PX 103. Housing Provider also submitted into evidence an affidavit of service stating that the notice had been served by mail on the building tenants, including Ms. Payne, on March 24, 2006. RX 202. In addition, Housing Provider submitted a Certificate of Election of Adjustment of General Applicability, date stamped March 24, 2006 by the Rent Administrator, reflecting an increase in the rent for Apartment No. 704 from \$670 to \$788, effective May 1, 2006. RX 201.

The Notice of Increase in Rent Charged, RX 203, complied with the requirements of the applicable regulations. It stated (1) the amount of the rent adjustment (\$118); (2) the amount of the adjusted rent (\$788); (3) the date upon which the adjusted rent would be due; and the date and authorization for the rent ceiling adjustment taken and perfected (2.7% Annual CPI-W, May 1, 2006). *See* 14 DCMR 4205.4(a). In addition, the notice certified that the rental unit and common elements of the housing accommodation were in substantial compliance with the housing regulations.⁵ *See* 14 DCMR 4205.4(b).

Housing Provider's Certificate of Election of Adjustment of General Applicability, RX 201, also complied with the requirements of the regulations. It (1) identified each rental unit to which the election applied, including unit 704; (2) set forth the amount of the adjustment elected to be taken (prior rent \$670, new rent \$788), and the prior and new rent ceiling (prior ceiling \$4,355, new ceiling \$4,472.59); and (3) was served and on file with the RACD within 30 days following the date when the housing provider was first eligible to take the adjustment (May 1, 2006). 14 DCMR 4204.10. Ms. Storey testified that the Certificate was posted in the elevators and hallways of the building, in accord with the notice requirements of 14 DCMR 4204.10 and

⁵ The Notice did not contain Housing Provider's registration number, but that information is not required under the regulation. 24 DCMR 4205.4(b).

4101.6. The increase in Tenant's rent, \$118, is the amount of the increase in the rent ceiling that Housing Provider took and perfected by filing the Certificate of Election of Adjustment of General Applicability,⁶

In sum, Housing Provider served Tenant with a proper notice of the rent adjustment more than 30 days before the adjustment was implemented and filed the appropriate forms with the Rent Administrator to take, perfect, and implement the rent increase. Tenant has not proven that Housing Provider failed to file the proper forms.

D. Tenant's Claim Alleging Violations of Housing Regulations

Tenant also asserted in the tenant petition that Housing Provider implemented a rent increase while Tenant's unit was not in substantial compliance with District Housing Regulations. Tenant also failed to sustain her burden of proof on this issue.

The only evidence Tenant presented concerning violations of the Housing Regulations was Ms. Payne's testimony about conditions in her apartment and the building common areas. Although Ms. Payne testified that she had taken photographs of some of the offending conditions, she did not bring them with her or attempt to introduce them into evidence. Nor did she submit any documents describing the conditions.

⁶ The adjustment of general applicability permitted as of May 1, 2006, was 4.2%, not 2.7%. 52 D.C. Reg. 991 (Feb. 10, 2006). A 2.7% adjustment was authorized for rent increases as of May 1, 2005. 52 D.C. Reg. 1089 (Feb. 4, 2005). The discrepancy is immaterial in the circumstances here. Although Housing Provider was authorized to take a 4.2% adjustment, Housing Provider elected to take a lesser 2.7% adjustment which was properly taken and perfected before it was properly implemented. The permissible amount of rent increase for an adjustment of general applicability is computed as a percentage of the applicable rent ceiling — \$4,355 — rather than the rent. 14 DCMR 4206.2.

Ms. Payne described some conditions that would constitute substantial housing violations if they were sufficiently serious, continued for a sufficient period of time, and were neglected by Housing Provider after Housing Provider received notice of the condition. These conditions include: (1) roaches and “rodents” that Ms. Payne observed in the hallways, 14 DCMR 4216.2(i); lack of hot water, 14 DCMR 4216.2(b); holes in the wall of her apartment 14 DCMR 4216.2(p); and “bad plumbing,” 14 DCMR 4216.2(h).

Ms. Payne testified that she “talked to the landlord” about some of these problems. But she gave no specific dates, Nor did she identify the particular problems she discussed or the identity of the person she spoke to. She did identify a complaint to Ms. James about “repairs” on April 28, 2006, when she also complained about the lease. But she did not describe the particular conditions that she complained about. She described no written complaints that she made to Housing Provider and offered no documents to support her testimony concerning the alleged housing code violations.

Ms. Payne testified that she observed a housing inspector in the building on one occasion and spoke to him, although she gave no details of the conversation. On cross-examination she admitted that she did not introduce herself to the housing inspector and merely saw him come into the building. In any event, Ms. Payne acknowledged that she never complained to the Department of Consumer and Regulatory Affairs about the condition of her apartment or the building and she had no personal knowledge of any housing code violations that had been issued.

Ms. Storey, for her part, testified that Housing Provider had an established procedure for correcting any housing code violations that may be observed. The property manager accompanies the housing inspector on any visit. If a Notice of Violation is issued, the property

manager prepares a service request. When the condition is corrected a copy of the closed out request is sent to the housing inspector. Copies of Notices of Violation and service requests are kept in the individual tenant files if they relate to a specific apartment. Ms. Storey testified that there was no record of any reported violations relating to Ms. Payne's unit.

On balance, I must conclude that Tenant has not sustained her burden to prove that there were substantial housing code violations in her apartment or in the building. First, Tenant did not present persuasive evidence that housing code violations existed. Although the conditions that Ms. Payne describe might constitute housing code violations under some circumstances, her testimony concerning the specific violations was so sketchy that it is impossible to determine whether any of the alleged violations was substantial. Ms. Payne was unable to give dates for any of the violations. Nor did she describe how frequently they occurred. Her complaint concerning bad plumbing was not connected to any specific problem with any specific facility. She could not give any dates when she was deprived of hot water or any description of how long the hot water was off.

A second defect of Tenant's evidence concerning housing code violations is the lack of any clear evidence that Ms. Payne gave Housing Provider notice of the alleged violations. Ms. Payne testified that she talked to the property manager about the problems but did not describe which problems or when. Housing Provider's evidence that no notice of housing code violations or service requests were entered in Tenant's file was uncontroverted. Ms. Payne described no written complaints to Housing Provider concerning the conditions in her apartment and she acknowledged that she never complained to the Department of Consumer and Regulatory Affairs about the conditions.

Tenant's claim that her apartment was not in substantial compliance with the District of Columbia Housing Regulations requires that Tenant submit proof of "the dates and duration of those violations," *Russell v. Smithy Braedon Prop. Co.*, TP 22,361 (RHC July 20, 1995) at 16. Moreover, to establish that that Tenant's unit or the building were in substantial violation of the housing code, Tenant must present evidence to show that Housing Provider was on notice of the violations. *Gavin v. Fred A. Smith Co.*, TP 21,918 (RHC Nov. 18, 1992) at 4.

Here Tenant has presented no evidence to demonstrate that any of the alleged violations was substantial. Nor has Tenant presented evidence to establish that any violations existed at the time Housing Provider increased Tenant's rent. Finally, there is no evidence that Housing Provider was given notice of any of the alleged housing code violations or an opportunity to abate them. Therefore I conclude that Tenant has not sustained her burden to prove that a rent increase was taken while her unit was not in substantial compliance with the District Housing Regulations.

E. Tenant's Claim Alleging Retaliation

Tenant's remaining claim is that "retaliatory action has been directed against me/us by my/our Housing Provider, manager or other agent for exercising our rights in violation of section 502 of the [Rental Housing Act]." Here, again, Tenant has failed to sustain her burden of proof. Retaliatory action is defined in the Rental Housing Act as follows:

Retaliatory action may include any action or proceeding not otherwise permitted by law which seeks to recover possession of a rental unit, action which would unlawfully increase rent, decrease services, increase the obligation of a Tenant, or constitute undue or unavoidable inconvenience, violate the privacy of the tenant, harass, reduce the quality or quantity of service, any refusal to honor a lease or rental agreement or any provision of a lease or

rental agreement, refusal to renew a lease or rental agreement, termination of a tenancy without cause, or any other form of threat or coercion.

D.C. Official Code § 42-3505.02(a).

The Rental Housing Act defines “Retaliatory action” as “action intentionally taken against a tenant by a housing provider to injure or get back at the tenant for having exercised rights protected by § 502 of the [Rental Housing] Act,” (D.C. Official Code § 42-3505.02). *See also* 14 DCMR 4303.3 (incorporating the criteria of D.C. Official Code § 42-3505.02(a) into the regulations).

These provisions require that Tenant prove that Housing Provider (1) “intentionally” acted to (2) injure or get back at Tenant for (3) having exercised protected rights. Although Housing Provider’s decision to implement Tenant’s rent increase and to decline to offer Tenant the new lease were obviously intentional, proof of the other two elements is absent here.

Tenant has offered no proof that Housing Provider’s decision to implement the rent increase was done with the intent to injure or get back at Tenant. The rent increase was lawful, and Housing Provider implemented similar increases for scores of other tenants in the building at the same time. *See* RX 201.

Nor has Tenant proven that Housing Provider’s refusal to let Tenant sign a new lease was retaliatory or otherwise improper. Housing Provider was under no obligation to offer Tenant a new lease or to offer a lower rent than was otherwise allowed by the law. Housing Provider did not refuse to renew Tenant’s lease, but continued to abide by Tenant’s original lease subject to permissible rent increases.

Although Ms. Payne testified that she complained to Ms. James about the condition of the apartment in this meeting, a protected activity that might justify a finding of retaliation, Ms. Payne also complained about Housing Provider's decision to increase the rent by \$118, an adjustment that Housing Provider could lawfully implement even if Tenant has not entered into the Concession Addendum that had expired five months before.⁷ Ms. Payne's description of the encounter suggests that her protests were vehement and, perhaps, even threatening, because Ms. James finally proposed to call security. Ms. Storey testified that Housing Provider's policy was to offer a new lease on equal terms to all of the tenants and not to negotiate with each tenant individually. In light of the circumstances, there is no reason to assume that Ms. James's refusal to let Ms. Payne sign the lease in retaliation for Tenant's complaints about the apartment. Ms. James may simply have withdrawn the offer because she believed Ms. Payne wanted to negotiate the terms of the new lease.

Even if we were to assume that Housing Provider's refusal to let Tenant sign the lease reflected an intent to injure or get back at her, Tenant has failed to prove that the impetus of this injury was her exercise of a protected right. Tenant's testimony and evidence did not prove that Housing Provider acted in a manner that would create a presumption of retaliatory action under the Housing Regulations. *See* 14 DCMR 4303.4;⁸ *Brookens v. Hagner Mgmt. Corp.*, TP 4,284

⁷ See note 6 *supra*.

⁸ Retaliatory action by a housing provider is presumed and may only be rebutted by clear and convincing evidence if the housing provider takes any of the acts enumerated in the regulation within six months of when the tenant takes specific protected acts: (a) making written complaints or oral complaints in front of a witness about repairs needed to bring the housing accommodation or rental unit into compliance with the Housing Regulations; (b) lodging complaints about housing violations with the District Government; (c) withholding rent after giving proper notice of a violation of the Housing Regulations; (d) engaging in lawful activities in a tenant organization; (e) attempting to enforce rights under a lease or contract with the housing provider; (f) bringing legal action against the housing provider. 14 DCMR 4303.4.

(RHC Aug. 31, 2000) at 12 (“The Act’s presumption of retaliation is not an automatic entitlement. The presumption does not arise until the tenant demonstrates that he exercised a right, which triggered the presumption, within six months of the housing provider’s action.”)

The only act that Ms. Payne described that could be construed as a provocation for retaliation was her assertion that she complained to the property manager about problems in her apartment. This testimony was uncorroborated and vague as to time and substance. It was also inconsistent with Ms. Storey’s testimony that Ms. Payne’s tenant file contained no record of any complaints concerning housing code violations. Because Ms. Payne’s complaints were oral and not made in the presence of a witness, they did not trigger a presumption of retaliation under 14 DCMR 4303.4. Thus Tenant has not sustained her burden to prove that Housing Provider’s refusal to renew the lease, a lawful act, was motivated by any intent to retaliate against Tenant for exercising a protected right.

F. Conclusion

It is understandable that Tenant would have questions about a \$118 rent increase, although Tenant should not have been surprised that Housing Provider would seek to increase her rent substantially after the Concession Addendum expired. But Tenant failed to prove the complaints that she alleged in the tenant petition: (a) that Housing Provider did not provide a proper 30 day notice; (b) that Housing Provider failed to file the proper rent increase forms with the RACD; (c) that the rent increase was taken while Tenant’s unit was not in substantial compliance with the District Housing Regulations; or (d) that Housing Provider took unlawful retaliatory action against Tenant. Therefore I will dismiss the tenant petition in accord with the following Findings of Fact and Conclusions of Law.

III. Findings of Fact

1. On December 15, 2004, Tenant, Cassandra Payne, executed a lease for the housing accommodation at issue here, 2300 Good Hope Road, S.E., apartment No. 704. RX 208. Prior to executing the lease Ms. Payne executed a Concession Addendum which provided for a reduction of the market rent to \$670 per month. RX 206. The lease itself stated that the rent was \$670 per month. RX 208.

2. In February, 2006, Tenant received a Notice of Increase in Rent Charged from Housing Provider stating that her rent would be increased from \$670 per month to \$688.09 per month. PX 103. But Tenant was instructed to “disregard the rent increase letter” in a letter from the property manager dated March 22, 2007. Tenant and the other residents were told that the management would be “sending out new letters with the correct increase amount in them.” RX 207.

3. On March 24, 2006, Housing Provider served a second Notice of Increase in Rent Charged on Tenant by mail. RX 202. The Notice stated that the rent in the housing accommodation would be increased by \$118 per month from \$670 to \$788, effective May 1, 2006. PX 103, RX 203. The Notice attributed the rent increase to an increase in the rent ceiling arising from the annual CPI-W increase under section 206(b) of the Rental Housing Act, D.C. Official Code § 42-3502.06(b). The Notice also stated that the rent ceiling in Tenant’s unit would increase to \$4,473, effective May 1, 2006.

4. On March 24, 2006, Housing Provider filed a Certificate of Election of Adjustment of General Applicability with the RACD. RX 201. The Certificate stated that the rent ceiling in Tenant’s apartment, 2300 Good Hope Road, S.E., No. 704, would be increased from \$4355 to

\$4472.59, effective May 1, 2006, an increase of \$118 when rounded to the nearest dollar. A copy of the Certificate was posted in the hallways and common areas of Tenant's building.

5. In April, 2006, Meta James, the property manager of Tenant's building, posted a notice offering the tenants an opportunity to reduce the amount of their rent increases in return for executing a new lease. On April 27, 2006, Ms. James gave Ms. Payne an unexecuted copy of a one year lease, beginning May 1, 2006, at a monthly rent of \$720. Ms. James told Ms. Payne she could review the lease and come back the next day to sign it.

6. Ms. Payne returned the following day and asked Ms. James questions about why her rent had been increased by \$118 and when Housing Provider was going to make repairs to Ms. Payne's apartment and to the building. Ms. James then refused to let Ms. Payne sign the lease and threatened to call security.

7. Beginning May 1, 2006 until December 18, 2006, the date of the hearing, Tenant paid her monthly rent of \$788.

8. At unspecified times Ms. Payne experienced problems with the hot water and plumbing in her apartment. There were some holes in the walls of her apartment and in the building hallways or common areas, but no evidence as to the size of the holes, their location, or how long they persisted. At times there were roaches in the hallways of Ms. Payne's building. Although Ms. Payne made occasional verbal complaints about some of these conditions she did not put any of the complaints in writing. She was unable to specify the date or substance of any of the complaints except for one about a need for "repairs" on April 28, 2006, nine days before she filed the tenant petition.

9. Ms. Payne did not complain to the Department of Consumer and Regulatory Affairs about conditions in her apartment and had no personal knowledge about any housing code violations being issued relating to her apartment or to the building.

10. The tenant file for Tenant's apartment contained no record of any housing code violations relating to the apartment.

11. On May 8, 2006, Tenant filed her tenant petition with the Rent Administrator naming the former property manager, Meta James, as Housing Provider. The owner of the building is identified in documents on file with the Rent Administrator — the Certificate of Election of Adjustment of General Applicability, the basic business license, and the certificate of occupancy — as A&A Marbury, LLC. RXs 201, 204, 205. Ms. James is no longer property manager for the building.

IV. Conclusions of Law

1. This matter is governed by the Rental Housing Act of 1985, D.C. Official Code §§ 42-3501.01-3509.07, the District of Columbia Administrative Procedure Act (DCAPA), D.C. Official Code §§ 2-501-510, the District of Columbia Municipal Regulations (DCMR), 1 DCMR 2800-2899, 1 DCMR 2920-2941, and 14 DCMR 4100-4399. As of October 1, 2006, the Office of Administrative Hearings has assumed jurisdiction of rental housing cases pursuant to the OAH Establishment Act, D.C. Code Title 2, § 1831.03.

2. Meta James, the Housing Provider named in the tenant petition, no longer has any association with the housing accommodation and no longer qualifies as a housing provider under

the Rental Housing Act. D.C. Official Code § 42-3501.03(15). Under the OAH Rules, the owner may be substituted as the Housing Provider. 1 DCMR 2925.2.

3. The Notice of Increase in Rent Charged that Housing Provider served by mail on Tenant on March 24, 2006, was given to Tenant more than 30 days before the rent increase took effect and was timely under the Rental Housing Act. PX 103, RX 203; D.C. Official Code § 42-3509.04(b).

4. The Notice of Increase in Rent Charged contained the information required by the Rental Housing Act and the Housing Regulations, including (1) the amount of the rent adjustment (\$118); (2) the amount of the adjusted rent (\$788); (3) the date upon which the adjusted rent would be due; and the date and authorization for the rent ceiling adjustment taken and perfected (2.7% Annual CPI, May 1, 2006); and (4) certification that the rental unit and common elements of the housing accommodation were in substantial compliance with the housing regulations. PX 103, RX 203; D.C. Official Code § 42-3502.08(f); 14 DCMR 4205.4(a), (b).

5. On March 24, 2006, Housing Provider filed a Certificate of Election of Adjustment of General Applicability with the RACD that complied with the Housing Regulations. RX 201; 14 DCMR 4204.6, 10.

6. On March 24, 2006, Housing Provider filed an Affidavit of Service for Notice of Rent Adjustment with the RACD that complied with the Housing Regulations. RX 202; 14 DCMR 4205.4(d).

7. Housing Provider filed the proper rent increase forms with the RACD.

8. The rent ceiling increase of \$118, and the rent adjustment of \$118, were permissible under the Rental Housing Act. D.C. Official Code § 42-3502.06(b).

9. Although Tenant testified that she complained of problems in her apartment, including occasional lack of hot water, bad plumbing, holes in the wall, and roaches in the hallways, the evidence failed to prove that Tenant's apartment was not in substantial compliance with the D.C. Housing Regulations at the time that Housing Provider implemented its rent increase on May 1, 2006, or that Housing Provider was given adequate notice of the existence of any housing code violation and an opportunity to correct the alleged violation.

10. Tenant failed to prove that her apartment was not in substantial compliance with the D.C. Housing Regulations at the time her rent increase was implemented.

11. Tenant failed to prove that either Housing Provider's implementation of a legal rent increase or Housing Provider's refusal to allow Tenant to execute a new lease at a rate lower than the rate specified in the notice of rent increase was a retaliatory action under the Rental Housing Act. D.C. Official Code § 42-3505.02(a). The evidence does not establish a retaliatory motive for either of Housing Provider's actions. Nor do the circumstances create a presumption of retaliation under the Rental Housing Act. D.C. Official Code § 42-3505.02(b).

V. Order

Accordingly, it is this **16th** day of **May, 2007**,

ORDERED that the owner of the housing accommodation, A&A Marbury, LLC, be substituted for Meta James as the Respondent/Housing Provider in this case; and it is further

ORDERED that this case is **DISMISSED WITH PREJUDICE**; and it is further

ORDERED, that the appeal rights of any party aggrieved by this Order are set forth below.

/s/
Nicholas H. Cobbs
Administrative Law Judge

APPENDIX**Tenant/Petitioner's Exhibits in Evidence**

Exhibit No.	Description
PX 101	Lease (Unexecuted) Dated May 1, 2006
PX 102	Notice of Increase in Rent Charged
PX 103	Notice of Increase in Rent Charged

Housing Provider/Respondent's Exhibits in Evidence

Exhibit No.	Description
RX 201	Certificate of Election of Adjustment of General Applicability, File-Stamped March 24, 2006
RX 202	Affidavit of Service for Notice of Rent Adjustment, File-Stamped March 24, 2006
RX 203	Notice of Increase in Rent Charged
RX 204	Basic Business License
RX 205	Certificate of Occupancy
RX 206	Concession Addendum Dated November 17, 2004
RX 207	Letter from Meta James to Residents Dated March 22, 2006
RX 208	Executed Lease Dated December 15, 2004